



DEPARTMENT OF THE AIR FORCE

ARLINGTON, VA 22203-1613

NOV 28 2008

Office Of The Deputy General Counsel

MEMORANDUM IN SUPPORT OF THE DEBARMENTS OF:

EXPRESS ONE INTERNATIONAL, INC.
EXPRESS ONE INTERNATIONAL HOLDING, INC.
JOSEPH D. KUCHTA
MERCEDES PLACER

Effective February 1, 2008, the Air Force proposed the debarments of Express One International, Inc. ("Express One"), Express One International Holding, Inc. ("EO Holding"), Signature International Flight Support Corporation ("SIF"), Joseph D. Kuchta ("Kuchta"), Neville Bennett ("Bennett"), Hiram Ramirez ("Ramirez") and Mercedes Placer ("Placer") from government contracting and from directly or indirectly receiving the benefits of federal assistance programs. This action was initiated pursuant to Federal Acquisition Regulation (FAR) Subpart 9.4.

SIF and Bennett did not respond to the notice of proposed debarment, and they were debarred on March 24, 2008. We have received a written Response in Opposition to the Notice of Proposed Debarment for Ramirez, Kuchta, and Placer, dated May 12, 2008 ("Opposition"). We also received written submissions in response to the proposed debarments from Express One and EO Holding, dated June 9, 2008, and September 24, 2008 ("Responses"). The Opposition and Responses were included in the administrative record ("the Record").

I have carefully read and considered the information in the Record.

INFORMATION IN THE RECORD

Information in the Record establishes by a preponderance of the evidence that at all times relevant hereto:

1. Express One is engaged in the business of providing air terminal and ground handling services to the Department of Defense and others. EO Holding was formed in September 2005 for the purpose of managing the government contracts awarded to Express One. At all times relevant to conduct associated with the proposed debarment, Kuchta was the President of EO Holding, and Placer was the Secretary of EO Holding.
2. Ramirez claimed to be in the business of providing air terminal and ground handling services. His address is the same as that of Placer.
3. US TRANSCOM, a joint command of the Department of Defense, awarded a contract to Maytag Aircraft Corporation on October 3, 2007, for Air Terminal and Ground Handling Services at nine sites in Central and South America. (the "Regional Contract").

4. On November 16, 2007, Ramirez filed a protest with the GAO, contesting the award of the Regional Contract to Maytag Aircraft Corporation. He neither bid on the contract, nor disclosed in his protest his apparent relationship with Express One or with Placer. The protest was filed to surreptitiously benefit Express One, the incumbent contractor that lost the competition for the follow-on contract.
5. The GAO ultimately dismissed the protest on technical grounds (*i.e.*, untimeliness and lack of an interested party).
6. US TRANSCOM issued a separate solicitation for Air Terminal and Ground Handling Services to be performed at Bogota, Colombia (the "Bogota Solicitation"). Express One (the incumbent contractor) and SIF colluded with each other to submit bids. Their relationship, and the collusive nature of their submissions in response to the Bogota Solicitation, was not disclosed to US TRANSCOM.
7. Express One and SIF agreed to cooperate with each other in the event one of the companies was awarded the Bogota contract. Express One, through Kuchta, shared information with SIF, and assisted SIF administratively in the submission of its bid. "Indeed, the bids and submissions of Express One were often 'a carbon copy' of SIF's bids and submissions." Opposition, p. 8. The Record is full of admissions by Kuchta that he prepared offers, including prices, for Express One and SIF in response to the Bogota Solicitation.
8. SIF submitted fraudulent Past and Present Evaluation information to US TRANSCOM in response to the Bogota Solicitation. The information SIF provided related to contracts performed by Signature Flight Support Corporation ("Signature"), a legitimate Huntsville, Alabama, company that was unaffiliated with SIF, but had a similar name as SIF. Further, all past performance information provided by SIF related to contracts claimed to have been performed by SIF prior to the June 4, 2007, "Business Start Date" listed by SIF in the Central Contractor Registration.
9. Kuchta specifically created SIF to look like Signature. Kuchta set up the incorporation of SIF. Without authority, Kuchta caused SIF to improperly download the authentic registered logo of Signature, and Kuchta used it to create a logo for SIF that was publicly displayed on SIF's website and business cards. Kuchta downloaded pictures and text from Signature's website and caused the pictures and text to be incorporated into SIF's website. Kuchta also included representations in SIF's bids and proposals to the United States Government that BBA Aviation, Signature's parent company, was the parent company of SIF. Kuchta engaged in this conduct to create the appearance that SIF was associated with Signature, when, in fact, the companies were unrelated.
10. As part of the effort to make the government believe that SIF was associated with Signature, Kuchta caused several government representatives to submit past performance reviews relating to Signature that were to be used by the government to evaluate SIF for contract award.
11. The real Signature is a large well known aircraft ground support company. Signature has brought a civil suit seeking damages and other relief for what amounts to unauthorized misuse of Signature's corporate trademarks and identity by Kuchta, Placer, Express One, and SIF.

ANALYSIS

Agencies shall solicit offers from, award contracts to, and consent to subcontracts with responsible contractors. FAR 9.402(a). To ensure that federal agencies contract only with responsible parties, agencies can debar contractors, as well as individuals, when it is in the public interest to do so based on any cause so serious or compelling in nature that it affects the present responsibility of the contractor or individual. FAR 9.406-2(c). Where there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, provided the cause for debarment is established by a preponderance of evidence, and debarment is in the public interest.

A. GAO Bid Protest

The Opposition presents facts and arguments challenging as a basis for debarment the GAO bid protest submitted by Ramirez. This challenge has merit. The proper remedy for a frivolous bid protest is summary dismissal of the protest by GAO, which is exactly what occurred with the frivolous protest filed by Ramirez. As the only basis for debarment against Ramirez is the frivolous protest, I shall terminate Ramirez' proposed debarment.

B. Collusive Bidding

The Record is clear. By his own admission, Kuchta prepared offers on behalf of Express One and SIF for the Bogota Solicitation. In preparing and submitting these offers, Kuchta determined the prices for both offers. This conduct undermines the integrity of the competitive process central to federal contracting.

Kuchta and Placer have argued in their Opposition that the collusive conduct was acceptable because Express One and SIF independently submitted their bids. This argument demonstrates a profound misunderstanding of the nature of collusive bidding. Collusive bidding occurs when two or more parties agree on elements of their proposals (e.g., pricing and other terms and conditions) in such a way as to undermine competition. Collusive bidding has nothing to do with whether an offeror independently obligates itself to perform in the event of contract award.

With certain limited exceptions, contracting officers must promote and provide for full and open competition in soliciting offers and awarding government contracts. See 10 U.S.C. § 2304. "Practices that eliminate competition or restrain trade usually lead to excessive prices and may warrant criminal, civil, or administrative action against participants." FAR 3.301(a). As a matter of law, federal agencies are required to report to the Attorney General any bids or proposals that evidence a violation of the antitrust laws. 10 U.S.C. § 2305(b)(9). Any agreement or mutual understanding among competing firms that restrains the natural operation of market forces is suspect. FAR 3.303(b). Practices or events that may evidence violations of the antitrust laws include "incidents suggesting direct collusion among competitors, such as the appearance of identical calculation or spelling errors in two or more competitive offers or the submission by one firm of offers for other firms." FAR 3.303(c)(8).

Contrary to the conclusions asserted in the Response, the record is clear through Kuchta's admissions and other evidence in the record that Kuchta, Placer, Express One, and SIF engaged

in collusive bidding. Such conduct is seriously improper, if not outright criminal, and it reflects a lack of present responsibility.

C. Improper Use of Signature's Corporate Identity and Past Performance Information

The Record again is clear. By his own admission, Kuchta took steps to prepare and caused to be submitted to the government unauthorized and misleading information relating to SIF's corporate identity, as well as SIF's past performance. In doing so, Kuchta misappropriated Signature's trademarks and images. Kuchta took these steps for the express purpose of inducing government contracting officers to believe that SIF was associated with Signature. Kuchta took these steps in an effort to secure contracts and/or subcontracts for Express One.

Kuchta and Placer have argued in their Opposition that use of Signature's identity and past performance information should be excused because Kuchta, Placer, and Bennett "specifically and clearly discussed" (Opposition, p. 7) the requirement that SIF obtain Signature's authorization for such use. This argument is meritless. Notwithstanding the purported discussions between Kuchta, Bennett, and Placer, the record is clear that SIF, its officer, and its agents *never* requested authorization from Signature to use Signature's trademarks and other company information. Whether the failure was intentional or an act of carelessness makes little difference for purposes of this debarment action. What is critical is that authorization was neither requested nor granted for SIF to use Signature's corporate identity. If the conduct was intentional, such conduct reflects a complete lack of honesty and integrity among those involved, as well as a clear lack of present responsibility required of federal contractors. If the conduct resulted from carelessness, the conduct reflects a critical breakdown of the operational controls necessary to structure business relationships, again reflecting the lack of responsibility required of federal contractors.

It is telling in this case that Kuchta made representations to the government in an offer he prepared for SIF that BBA Holdings, Inc. was SIF's parent company. Kuchta had no good faith basis for including such a representation in SIF's proposal. The fact that the record is devoid of any evidence that the parties had any concern about the true ownership and control of SIF is troubling, and makes clear the lack of present responsibility on the part of Kuchta, Placer, Bennett, Express One, EO Holding, and SIF.

D. Express One and EO Holding Responses

Express One and EO Holding separately argue that because Kuchta and Placer acted outside the scope of their employment, going so far as to intentionally prevent the officers and directors of Express One and EO Holding from discovering the reckless conduct performed in the name of Express One and EO Holding, this debarment action should be terminated. I disagree. When considering debarment, the debarring official should consider the factors set forth at FAR 9.406-1 to determine whether debarment is in the Government's interest. One of the FAR 9.406-1 factors is whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes the cause(s) for debarment. The answer in this case is a resounding no. Neither Express One nor EO Holding has provided any information establishing the existence of internal standards, processes, or controls that would have prevented, or at least surfaced, the rouge activity on the part of Kuchta and Placer. Moreover, the Record makes clear that the companies completely failed to exercise any oversight

or control over the activities of Kuchta and Placer. This permissive corporate environment allowed Kuchta and Placer to operate unchecked, apparently for years. The lack of corporate standards and controls reflects a lack of responsibility on the part of Express One and EO Holding.

FINDINGS

1. The improper conduct of Kuchta, Placer, Express One, and EO Holding is of so serious or compelling a nature that it affects their present responsibility to be Government contractors or subcontractors and provides a basis for their debarments pursuant to FAR 9.406-2(c).
2. Pursuant to FAR 9.406-5(b) the seriously improper conduct of Express One may be imputed to Kuchta, as he was an officer and employee of Express One who participated in, knew of, or had reason to know of Express One's conduct. This imputed conduct provides a separate, independent basis for Kuchta's debarment.
3. Pursuant to FAR 9.406-5(b) the seriously improper conduct of EO Holding may be imputed to Kuchta and Placer, as they were officers and employees of EO Holding who participated in, knew of, or had reason to know of EO Holding's conduct. This imputed conduct provides a separate, independent basis for Kuchta's and Placer's debarment.
4. Pursuant to FAR 9.406-1(b), debarments may be extended to the affiliates of a contractor. Express One, EO Holding, and SIF are affiliates of each other, as each controls, or has the power to control the other. That affiliation provides a separate, independent basis for their debarments.
5. Pursuant to FAR 9.406-1(b), debarments may be extended to the affiliates of a contractor. Express One and Kuchta are affiliates, as Kuchta controls, or has the power to control Express One. EO Holding, Kuchta, and Placer are affiliates, as Kuchta and Placer control, or have the power to control EO Holding. These affiliations provides a separate, independent basis for their debarments.
6. Pursuant to FAR 9.406-5 (c) the fraudulent, criminal, or other seriously improper conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Thus, each of Express One, EO Holding, and SIF's fraudulent, criminal, or other seriously improper conduct may be imputed to each of the others, *i.e.*, Express One, EO Holding, and SIF, thereby providing a separate, and independent basis for each of their debarments.
7. FAR 9.406-4, Period of Debarment, mandates that debarment shall be for a period commensurate with the seriousness of the causes, generally not to exceed three years. The record is clear that Kuchta masterminded and facilitated much of the misconduct that forms the bases for these debarments. Kuchta's conduct is reprehensible; he has proven himself to be dishonest and scheming, or grossly negligent. Moreover, Kuchta has failed to acknowledge any responsibility for his conduct. Accordingly, I find it necessary and appropriate to debar Kuchta for a period of five years. Further, in consideration of the mitigating factors presented by Express One and EO Holding in their submissions and presentation, I have determined that less than the three-year period generally imposed under the FAR is necessary to protect the Government's business interests with regard to those companies.

DECISION

Pursuant to the authority granted by FAR Subpart 9.4, Defense FAR Supplement, Subpart 209.4, and 32 C.F.R. Section 25, and based on the evidence in the record and the findings herein:

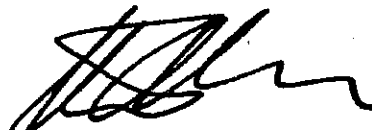
Express One International, Inc. is debarred for a period of two years from February 1, 2008, the date of its proposed debarment. Express One's debarment shall terminate on January 31, 2010.

Express One International Holding is debarred for a period of two years from February 1, 2008, the date of its proposed debarment. EO Holding's debarment shall terminate on January 31, 2010.

Mercedes Placer is debarred for a period of three years from February 1, 2008, the date of her proposed debarment. Her debarment shall terminate on January 31, 2011.

Joseph D. Kuchta is debarred for a period of five years from February 1, 2008, the date of his proposed debarment. His debarment shall terminate on January 31, 2013.

Hiram Ramirez' proposed debarment shall be terminated.



STEVEN A. SHAW
Deputy General Counsel
(Contractor Responsibility)